

CERTIFICATION OF ENROLLMENT

SENATE BILL 5434

60th Legislature
2007 Regular Session

Passed by the Senate April 2, 2007
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 20, 2007
YEAS 97 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5434** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5434

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senators Poulsen, Schoesler, Kastama, Zarelli, Prentice, Regala, Benton and Rasmussen; by request of Department of Revenue

Read first time 01/19/2007. Referred to Committee on Economic Development, Trade & Management.

1 AN ACT Relating to the excise taxation of sales of tangible
2 personal property originating from or destined to foreign countries;
3 adding a new section to chapter 82.04 RCW; adding a new section to
4 chapter 82.08 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** Because of the uncertainty regarding the
7 constitutional limitations on the taxation of import and export sales
8 of tangible personal property, the legislature recognizes the need to
9 provide clarity in the taxation of imports and exports. It is the
10 legislature's intent to provide a statutory tax exemption for the sale
11 of tangible personal property in import or export commerce, which is
12 not dependent on future interpretation of the constitutional
13 limitations on the taxation of imports and exports by the courts. The
14 sole purpose of the legislature in enacting sections 2 and 3 of this
15 act is to codify current department practice in the taxation of import
16 and export sales of tangible personal property consistent with WAC
17 458-20-193C. It is not the intent of the legislature in enacting
18 sections 2 and 3 of this act to eliminate, narrow, or expand existing
19 exemptions under WAC 458-20-193C.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW
2 to read as follows:

3 (1) This chapter does not apply to the sale of tangible personal
4 property in import or export commerce.

5 (2) Tangible personal property is in import commerce while the
6 property is in the process of import transportation. Except as
7 provided in (a) through (c) of this subsection, property is in the
8 process of import transportation from the time the property begins its
9 transportation at a point outside of the United States until the time
10 that the property is delivered to the buyer in this state. Property is
11 also in the process of import transportation if it is merely flowing
12 through this state on its way to a destination in some other state or
13 country. However, property is no longer in the process of import
14 transportation when the property is:

15 (a) Put to actual use in any state, territory, or possession of the
16 United States for any purpose;

17 (b) Resold by the importer or any other person after the property
18 has arrived in this state or any other state, territory, or possession
19 of the United States, regardless of whether the property is in its
20 original unbroken package or container; or

21 (c) Processed, handled, or otherwise stopped in transit for a
22 business purpose other than shipping needs, if the processing, handling
23 or other stoppage of transit occurs within the United States, including
24 any of its possessions or territories, or the territorial waters of
25 this state or any other state, regardless of whether the processing,
26 handling, or other stoppage of transit occurs within a foreign trade
27 zone.

28 (3)(a) Tangible personal property is in export commerce when the
29 seller delivers the property to:

30 (i) The buyer at a destination in a foreign country;

31 (ii) A carrier consigned to and for transportation to a destination
32 in a foreign country;

33 (iii) The buyer at shipside or aboard the buyer's vessel or other
34 vehicle of transportation under circumstances where it is clear that
35 the process of exportation of the property has begun; or

36 (iv) The buyer in this state if the property is capable of being
37 transported to a foreign destination under its own power, the seller
38 files a shipper's export declaration with respect to the property

1 listing the seller as the exporter, and the buyer immediately
2 transports the property directly to a destination in a foreign country.
3 This subsection (3)(a)(iv) does not apply to sales of motor vehicles as
4 defined in RCW 46.04.320.

5 (b) The exemption under this subsection (3) applies with respect to
6 property delivered to the buyer in this state if, at the time of
7 delivery, there is a certainty of export, and the process of export has
8 begun. The process of exportation will not be deemed to have begun if
9 the property is merely in storage awaiting shipment, even though there
10 is reasonable certainty that the property will be exported. The
11 intention to export, as evidenced for example, by financial and
12 contractual relationships does not indicate certainty of export. The
13 process of exportation begins when the property starts its final and
14 certain continuous movement to a destination in a foreign country.

15 (4) Persons claiming an exemption under this section must keep and
16 maintain records for the period required by RCW 82.32.070 establishing
17 their right to the exemption.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.08 RCW
19 to read as follows:

20 The tax imposed by RCW 82.08.020 does not apply to sales of
21 tangible personal property if the sale is exempt from business and
22 occupation tax under section 2 of this act.

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